IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

DAVID A. ANAYA,

       Plaintiff,

vs.   1:18-cv-00941-JAP-LF

THE COUNTY OF SOCORRO AND
SHERIFF WILLIAM ARMIJO AND DEPUTY
KYLE HALEY in their professional and individual capacities,

       Defendants.

<u>ORDER TO SHOW CAUSE</u>

THIS MATTER comes before the Court on defendants Sheriff William Armijo and Deputy Kyle Haley's Suggestion of Death Upon the Record filed January 23, 2019. Doc. 6. Plaintiff has not responded to the suggestion of death, nor has the plaintiff filed a motion for substitution of a party for David A. Anaya.

Federal Rule of Civil Procedure 25 provides for the substitution of a party if a party dies and the claim is not extinguished. FED. R. CIV. P. 25(a)(1). "A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the act by or against the decedent must be dismissed." *Id*; *see also Grandbouche v. Lovell*, 913 F.2d 835, 836 (10th Cir. 1990) ("Rule 25(a)(1) was amended to require a motion for substitution to be filed within ninety days from the time a suggestion of death is filed in the district court and properly served.").

Defendants electronically filed their suggestion of death on January 23, 2019. Doc. 6. "Electronic filing constitutes service for purposes of FED. R. CIV. P. 5" except under circumstances not applicable here. D.N.M.LR-Civ. 5.1(a). Plaintiff had through April 23, 2019, to file a motion for substitution. Plaintiff did not file a motion for substitution by April 23, 2019.

IT IS THEREFORE ORDERED that plaintiff David A. Anaya must provide the Court with a written explanation showing good cause why this case should not be dismissed pursuant to FED. R. CIV. P. 25 on or before May 6, 2019. The failure to comply with this order will result in a recommendation to the district judge to dismiss Mr. Anaya's complaint without further warning.

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Laura Fashing
United States Magistrate Judge